19.48 File No. O. University 48 /

Legal DEPARTMENT
A BRANCH

Subject:— O. University

Opinions under the Bombay University Act, 1928

P-6
E

File No. O. University 48.

Std. Scott. Slip 24 E. e.

53-A

C O N T E N T S.

Legal Department File No. O.University/48

S.No.	R.I./O.No.	Subject	Pages.
1.	O.No.45/dt.3.1.48	Bombay University Act, 1928 Sec. 14(1) - Termination of appointment of nominated ~~mf~~ Fellows from Sind.	1.
2.	O.No.11545 6.12.48	Sec. 13(1) - Whether Mr.X loses his seat on the University by reason of his ceasing to be a member of the Assembly.	3 - 5
3.	O.No. 12543 31-12-48	Sec. 39(1)(b) - Whether University can legally prescribe scales of pay for adoption by affiliated colleges.	7 - 9

5-Cs.
M.V.V.
18/5.

18/5 AJ
18/5

Office of the R.L.A.

Termination of appointment of nominated Fellows from Sind.

Bombay University Act, 1928.

R.L.A's opinion No.11068, dated 20.11.47

A Nominated Fellow of the Bombay University is an Ordinary Fellow under section 13 of the Bombay University Act, 1928, and shall save as otherwise provided hold office for five years. Section 14(1) provides that if any person being Chancellor, Vice-Chancellor, or Fellow of the said University shall leave India without the intention of returning thereto, his office shall thereupon become vacant. Under section 15(1) any Ordinary Fellow may resign his office and on the acceptance of the resignation the office shall become vacant. Sub-section (2) provides that if for a period of twelve consecutive months any Ordinary Fellow except a Fellow for life, has not attended a meeting of the Senate, other than a convocation, the Chancellor may declare his office to be vacant. It will follow from these provisions that the Fellows nominated from Sind will incur disqualification in the event of their leaving India without the intention of returning thereto or failing to attend the meeting of the Senate for a period of twelve consecutive months, but there is no provision in the Act under which their appointments can be terminated on any ground. As already pointed out in R.L.A's opinion No.11068, dated 20/11/47, the Bombay University still continues to operate in Sind and until an express provision is made in the Sind University Act prohibiting the operation of the Bombay University in Sind there will be nothing unconstitutional in the four nominated persons continuing to be the Fellows of the Bombay University although they are no longer in India.

Sd/- P.H.IAD,
2/1/48

Remembrancer of Legal Affairs.

U.R. to R.& I.D.No.45, dated the 3rd January 1948.

4-Ca.
M.V.V.
17/3.

Office of the M.L.A.

Mr. Ahmedmiya Sharmiya Shaikh, M.L.A. has ceased to be a member of the Assembly. As Mr. Shaikh was one of the five elected rerresentatives of the Bombay Legislative Assembly on the University of Bombay, the question for consideration is whether Mr. Shaikh loses his seat on the University by reason of his ceasing to be a member of the Assembly.

2. Section 13(1),II(A)(vii) of the Bombay University Act, 1928 provides that 5 fellows, of whom one shall be the representative of the University on the Assembly, shall be ~~them~~ elected by the Bombay Legislative Assembly. Section 16 of the Act provides that the Ordinary Fellows shall, save as herein otherwise provided hold office for five years. In the case of Fellows elected by the Bombay Legislative Assembly, the proviso (2) to section 13(1) ~~aaaa

reason of the expiry of the term of the Assembly and the election of a new Fellow. Mr. Shaikh who has ceased to be a member of the Assembly does not therefore cease to be a Fellow.

Sd/- P.J.MD.,

Remembrancer of Legal Affairs.

No. to Education and Industries Department, No.11545,

Dated the 6th December 1948.

A-Cs.
P.V.V.
17/K.

Office of the D.L.A.

It seems that the Senate of the University of Bombay has passed a resolution that with effect from January 1949 the minimum scales and grades of pay for the members of the staff of all the affiliated colleges shall be as indicated in the resolution. The question raised for the D.L.A.'s advice is whether the University can legally prescribe scales of pay for adoption by affiliated colleges. The Education & Industries Department thinks that it can do so under section 39(1) of the Bombay University Act, 1928.

2. Section 39(1) (b) is to the effect that a college applying for affiliation to the University shall send a letter of application to the Registrar and shall satisfy the Syndicate and the Academic Council that the qualifications of the teaching staff and the conditions governing their tenure of office are such as to make due provision for the courses of instruction to be undertaken by the college. Under section 41(3) the Syndicate may call upon any college so inspected to take within a specified period such action as may appear to them to be necessary in respect of any of the matters referred to in sub-section (1) of section 39. The words "conditions governing their tenure of office" must in the first place be construed in their proper context which relates them to making due provisions for the courses of instruction. Prima facie, therefore, the conditions would have hardly any bearing upon the salaries and grade of the teaching staff. The intention underlying clause (b) of section 39(1) appears to be that the Syndicate should be satisfied that the teaching staff not only possess the proper qualifications but is assured a continuity of employment which is essential for a proper provision for courses of instructio

A-Ce.
P.V.V.
17/5.

By "tenure of office" we mean the period of holding the office. A distinction can be drawn between the of tenure on which an office is held on the one hand and the incidents relating to service in the office on the other. It is among the latter incidents that the grade and pay scale can be legitimately included. Compare Suraj Narayan Anand v. The North West Frontier Province, 1941 Federal Court Reports p. 37 at p. 48. Section 39(1) (b), therefore, confers no authority upon the University to prescribe scales and grades of pay and, therefore, such scales and grades cannot be enforced under the provisions of section 41 or even 42. It is perhaps for that reason that action has been taken by way of a resolution which in all probability is intended to be recommendatory and not mandatory.

Sd/- F.M.LAD,
31/12.

Remembrancer of Legal Affairs.

U.R. TO E.& I.D.No. 12543, dated the 31st December 1948

A.-Cs.
F.V.V.

18/3.